

## REMARKS

Claims 1-14 and 16-27 are pending in this application.

### Claim Rejections Under 35 U.S.C. §112

Claims 9-14 were rejected under 35 U.S.C. §112, first and second paragraphs, as lacking a definition and description of each variable, as well as how to determine each variable.

A person skilled in the art should be able to readily compute the metrics and practice the invention using the algorithms provided. The formulas are simple, straightforward mathematical expressions, readily understood and used by anyone with even a modest level of mathematical expertise, well below one of ordinary skills in the art. Between the specification, claims, and the included exhibits, it should be apparent that all the enabling information to practice the invention has been clearly provided.

### Requirement For Information

Applicant and assignee were required to provide information that the Examiner determined was reasonably necessary to the examination of this application. In particular, required information included where, specifically, the mathematical equation presented in claims 9-14 and 22-27 came from.

The mathematical equation presented in claims 9-14 and 22-27 came from applicants, who developed the algebraic expression represented symbolically and mathematically in the equation, and was not derived from existing equations.

### Claim Rejections Under 35 U.S.C. §101

Claims 1-27 were rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter.

The preamble and body of claims 1 and 2 as amended are within a statutory class of inventions, namely a system. Further, Claim 1 and 2 as amended do not claim software per se, but instead claim software, memory, and a processor. Claims 3-27, which depend from Claims 1 and 2 as amended, are patentable in view of the patentability of the claims from which they depend, as set forth above.

### Claim Rejections Under 35 U.S.C. §112

Claims 9-14 and 22-27 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement.

The components of the mathematical formulas that compute the quantitative values for metrics that monitor organizational change and improvement are, as above, simple, straightforward mathematical expressions, readily understood and used by anyone with even a modest level of mathematical expertise, well below one of ordinary skills in the art. Further, as above, between the specification, claims, and the included exhibits, it should be apparent that all the enabling information to practice the invention has been clearly provided.

### Claim Rejections Under 35 U.S.C. §112

Claims 1, 3-14, and 22-27 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, it was unclear as to what applicant claims.

As set forth above, the preamble and body of claims 1 as amended are within a statutory class of inventions, namely a system. Further, as above, Claim 1 as amended does not claim a product or machine and a product, but instead claim software, memory, and a processor. Claims 3-27, which depend from Claims 1 and 2 as amended, are patentable in view of the patentability of the claims from which they depend, as set forth above.

Also, in Claims 9-14 and 22-27, as above, the components of the mathematical formulas that compute the quantitative values for metrics that monitor organizational change and improvement are simple, straightforward mathematical expressions, readily understood and used by anyone with even a modest level of mathematical expertise, well below one of ordinary skills in the art. Further, as above, between the specification, claims, and the included exhibits, it should be apparent that all the enabling information to practice the invention has been clearly provided.

#### Objection To Specification

The Specification was objected to as attempting to incorporate essential material for understanding the formulas for the various metrics for the tool characteristics by reference in Exhibits A-H.

As above, the mathematical formulas and the components thereof in the specification that compute the quantitative values for metrics that monitor organizational change and improvement are, as above, simple, straightforward mathematical expressions, readily understood and used by anyone with even a modest level of mathematical expertise, well below one of ordinary skills in the art. Further, as above, between the specification, claims,

and the included exhibits, it should be apparent that all the enabling information to practice the invention has been clearly provided.

Also, incorporation in the Specification by reference to attached Exhibits is consistent with the basis therefor in the Manual of Patent Examining Procedure, §608.01(p)(1.) (8th Ed. 2008), at page 600-94, which states "The incorporation by reference practice with respect to applications which issue as U.S. patents provides the public with a patent disclosure which minimizes the public's burden to search for and obtain copies of documents incorporated by reference which may not be readily available." The public burden is non-existent herein in that the Exhibits incorporated by reference in this application have been scanned into the publicly available section of the USPTO Website, and are currently available for free and virtually instantaneously therefrom.

#### Claim Rejections Under 35 U.S.C. §103

Claims 1-8 and 16-21 were rejected under 35 U.S.C. 103(a) as being unpatentable over Townsend (U.S. Patent No. 6,631,473) in view of EnCompass Knowledge Systems, Inc.

However, the Townsend reference does not disclose the claimed invention, and the Encompass reference is not a valid reference, as set forth below.

The Examiner clearly recognizes the differences between the Townsend reference and the claimed invention by stating, in paragraph 28, on page 12 of the Office Action:

"Townsend does not directly teach obtaining input data from participants in an organization regarding their perceptions".

The Examiner then goes on to state that Encompass supplies the teaching thereof.

However, The EnCompass Knowledge Systems, Inc. Notes ("the Encompass reference") which were cited in the Office Action, is not a prior art reference against the

present application. The effective filing date of this application is October 8, 2002, which means that a reference must have a date prior to October 8, 2001 to be a prior art reference. The Copyright Notice date of 2000 on the Encompass reference was not a date of public access thereto, in that it was the year of non-public revision thereof (Declaration of Michael M. Mann, Paragraphs 2 and 3). The date of first public posting of the Encompass reference was June 3, 2002 (Mann Declaration, Paragraphs 4 and 5), after the prior art reference date of October 8, 2001, and therefore the Encompass reference is not a prior art reference against the present application.

With the EnCompass reference removed, the arguments made by the Examiner must now be supported entirely by Townsend alone, which the Examiner concedes does not teach key features of the invention, which are only taught by the EnCompass reference.

Clearly, therefore, the Examiner has proclaimed the absolute criticality of the EnCompass reference in rejecting Applicants' claims and, therefore, failure of this reference as an item of prior art should totally obviate the rejection, and, indeed, this is actually the case.

#### Dependent Claims

In view of the patentability of the underlying amended independent claims over the references as set forth above, it is submitted that the claims depending therefrom are likewise patentable.

CONCLUSION

It is submitted in view of the above that there is no teaching or suggestion of applicant's invention as claimed herein, within the scope of the disclosure of the cited references, without extensive modification and the exercise of inventive talent.

In light of the above amendments and remarks, applicant submits that the application is in condition for allowance, and requests that it be passed to issue. If there are any issues which can be discussed in a telephone interview, the Examiner is requested to contact applicant's attorney at (310) 242-2732.

Respectfully submitted,

FULWIDER PATTON LLP

Date: June 30, 2009

By: /howard n. sommers/  
Howard N. Sommers  
Registration No. 24,318

Howard Hughes Center  
6060 Center Drive, Tenth Floor  
Los Angeles, CA 90045  
Telephone: (310) 824-5555  
Facsimile: (310) 824-9696  
Customer No. 24201  
348214.1